

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

September 18, 2006

In the Matter of
James P. LaMountain

Docket No. 2006-112
File No. UAO-WE-06-7002
Holland

RECOMMENDED FINAL DECISION

This matter is an appeal of a Unilateral Administrative Order (UAO) issued by MassDEP for alleged violations of the open burning rules in 310 CMR 7.07 to Mr. James P. LaMountain. The petitioner, Mr. LaMountain, requested an adjudicatory hearing, raising the ceremonial and agricultural nature of the activity. The Claim does not request specific modifications or other relief to be obtained through the adjudicatory hearing.

On August 17, 2006 the Department filed a Motion to Dismiss the claim. The Motion is based on the Department's finding that no permits had been issued for the fires described in the Order, and the petitioner's claim did not contest that finding or assert that permits were in fact granted. The petitioner did not file an objection or other response to the Motion.

A Prescreening Conference was held by telephone on September 15, 2006. During the conference the petitioner stated that he had no objection to the Department's Motion to Dismiss. More specifically, the petitioner did not object to the dismissal of this appeal through the grant of

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the Department's Motion to Dismiss, which would make the UAO reciting fires occurring on May 28, May 30, June 24 and June 27, 2006 without the required open burning permit, final.

I find that the petitioner's claim does not request any relief that would modify the Order or any other type of relief from the adjudicatory process. Instead it appears from the claim that the petitioner seeks acknowledgement of the agricultural status of the property and the requirements for any future burning, without contesting that the fires in question were conducted without the required permits. Such relief cannot be provided through review of the Order and the legal basis for its issuance. I therefore recommend granting the unopposed Motion to Dismiss pursuant to 310 CMR 1.01(5)(a)5.f.v.

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Ann Lowery
Presiding Officer

Adopted by Acting Commissioner Arleen O'Donnell, September 25, 2006